

IN THE MATTER OF INTEREST ARBITRATION BETWEEN

CITY OF CHAMPLIN, MN	)	
“Employer”	)	
	)	BMS Case No. 11-PN-0057
AND	)	
	)	
LAW ENFORCEMENT LABOR SERVICES, INC.	)	
LOCAL NO. 63	)	
“Union”	)	

NAME OF ARBITRATOR: John J. Flagler

DATE AND PLACE OF HEARING: May 12, 2011; Champlin, MN

DATE OF RECEIPT OF POST-HEARING BRIEFS: May 26, 2011

APPEARANCES

For the City:

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For the Union:

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## JURISDICTION

The hearing in the above-captioned matter between the City of Champlin and Law Enforcement Labor Services, Inc. was conducted on May 12, 2011 at the Champlin City Hall pursuant to the Minnesota Public Employment Labor Relations Act (MPELRA).

There is no dispute that the matter and each issue is properly before the arbitrator. The parties presented exhibits and arguments at the hearing and agreed to submit post-hearing briefs due on May 26, 2011.

## THE ISSUES

Twelve issues were certified for arbitration. In the time period between certification of issues, the parties agreed upon the following certified issues as follows:

- (1) Duration – Duration of Contract – Article 37. The parties agreed upon a three year agreement with a duration of January 1, 2010 through December 31, 2012.
- (5) Insurance – Insurance 2011 – Article 22. The parties agreed to increase the City's 2010 contribution to health insurance premiums by twenty-five dollars (\$25). The City also increased the life insurance benefit to \$20,000 as requested by the Union.
- (10) Uniforms – Uniforms 2010 – Article 25. The parties agreed to increase this amount by \$20. This will increase the uniform amount to \$740.
- (11) Uniforms – Uniforms 2011 – Article 25. The parties agreed to increase this amount by \$20. This will increase the uniform amount to \$760.
- (12) Uniforms – Uniforms 2012 – Article 25. The parties agreed to increase this amount by \$20. This will increase uniform amount to \$780.

In addition, the City dropped its proposed change on Issue 9 Retirement Insurance.

As a result of the agreement reached by the parties, the following issues were submitted for the arbitrator:

- (2) Wages – Wages 2010 – Article 28
- (3) Wages – Wages 2011 – Article 28
- (4) Wages – Wages 2012 – Article 28
- (6) Insurance – Insurance 2012 – Article 22
- (7) Sick Leave – Sick Leave – Article 18
- (8) Parenting Leave – Parenting Leave – Article 27.3

## DISCUSSION

Wages – Wages 2010 – Article 28

Wages – Wages 2011 – Article 28

Wages – Wages 2012 – Article 28

The dispute centers on the amount of the general increase during 2010, 2011 and 2012.

## DISCUSSION AND AWARD

### Analysis of External Market Factor

The external market comparison carries relatively little weight in this determination of the appropriate wage adjustment for the contract years of 2010, 2011, and 2012 for several reasons. In the first instance the data are sparse with inadequate information for the year 2012 and unreliable data for 2010 due to the fact that multi-year agreements signed before October 2008 assumed higher revenues for 2009 and 2010 than actually occurred.

In like vein, projected revenues for multi year agreements covering 2009, 2010 since when revenues had not yet begun to improve were overly pessimistic. Thus, the results of negotiations for these contract years varied unduly in response to unrealistic expectations by the parties of the unfolding course of the recession.

In the battle of data, the Union argues that only its comparables are based on “hard numbers.” The City counters that none of the data arrays are foolproof, given the instability of the economy over the time periods from which they were drawn. Probably the greatest shortcoming of the Union’s external comparables is that they do not include, as they should, the City’s longevity payments. This omission results in a significant distortion of the total per officer wage data due to the specific relevance of the fact that 17 of the City’s 19 officers are already receiving longevity payments. This increment adds up to nine percent (9%) to top pay.

External wage comparisons are often considered less determinative of what should constitute a proper wage adjustment than do internal wage comparability. Given the relative unreliability of the competing data arrays submitted by the parties, this superiority of internal data needs be viewed in a positive light.

The reasons internal wage comparisons should be given greater weight both at the bargaining table and in interest arbitration are several. In the first instance internal equity, according to competent research, is considered far more important in judging what is “fair” by workers in every type of job or profession. In short, a patrol officer in Edina tends to care more about what the city pays its firefighters than he/she does what the City of Brainerd pays its patrol officers.

Similarly, the Chief Medical Officer of Lac Qui Parle County probably cares more about what the County Sheriff is paid than in the compensation for the Chief Medical Officer of

Koochiching County. This generalization holds because employees at all levels know that wage variations between different public jurisdictions arise for a wide host of reasons – differences in tax base existing public indebtedness, the income base of local taxpayers, fire and real estate insurance rates, and the like. Public employees have some knowledge of how these factors operate in their own communities but little about others, even if similar size communities are compared.

Recognizing that these many differences between and among communities operate to cause variances in compensation for comparable work leads employees within the same political jurisdiction to expect that similar wage determinants will produce more comparable results within the same taxing authority than with often distant communities.

Beyond this substantial advantage, moreover, internal comparisons enjoy the real benefit of reliability where external comparisons are often deeply flawed by reflecting different decision points in time, internal data usually reflect contemporaneous periods of time – both as to when the decisions were made on the wages/benefits of covered groups of employees but all apply to the same or similar periods of coverage. By contrast, external data may be the product of multi year coverage, as mentioned earlier, where such coverage often does not correspond to the same time period as the cities to which it may be so imperfectly compared.

As to internal comparisons, the parties have at their disposal each and every item to be included. Thus, the measure to be compared may, at the low end, be base wage rates or, at the high end, average hourly earnings which would include all payments for time not actually worked such as vacation and holiday pay, shift premiums, medical care, jury duty, bereavement pay, sick leave, and “add ons” such as longevity increments and performance bonuses.

Rarely do external comparisons reflect such earnings, which vary far more widely than do base rates between political jurisdictions within a range of similar size comparison units. Earnings constitute a more meaningful measure of what any job is worth than does the bare bones basic wage salary scale which commonly stands as the wage measure in external market comparisons. These advantages of internal comparisons are, therefore, more valid in measuring benefit to the employee but also in totaling the costs of employment to the political subdivision.

Finally, arbitrators often recognize that mere size of the comparison city, county, or other political subdivision has no significance apart from the assumption that similar size employing units may have similar ability to fund its public services, maintain the same size employments in their different departments, than simply similar job titles. Job titles alone do not form a basis for concluding that a police officer in a metropolitan inner ring suburb has similar training requirements and peace officer duties as a free standing city in a resort area, e.g., mistakenly assuming that Brooklyn Center can realistically be compared with Alexandria on the aforementioned variables.

Does the foregoing critique of external market comparison mean that these are useless? Far from it. The ultimate test of market forces obviously go beyond the borders of any particular city, county, or, in some instances, state. The parties often succeed in sorting out those factors that make another jurisdiction comparable. Such realistic comparisons result from the grind and

hard work of negotiations, and can form the expectations of public employee's concerning a fair wage and benefit package.

Where substantial disparities occur between genuinely similar jobs in realistically comparable employment jurisdictions external wage comparisons serve an eminently useful purpose in wage determinations at the bargaining table and in interest arbitration.

Applying the above observations to the instant case, the external comparison prove of negligible value. These data show no glaring disparity between what the City pays its police officers and the basic wage salary schedules – the flawed comparison samples from supposedly like-situated cities. Indeed, the Union's reliance on these external comparables purport to show a 1.5% below average to a 1.5% above average result from the competing positions of the parties. If the average of 9% attributable to the longevity feature were added to the City's position, these net results in the three year contract cycle subject to this arbitration would surely show a different picture of the external comparison than presented here by the Union.

In plain fact, placing the three year contract cycle, already agreed to, in proper perspective illustrates that the City's proposal actually amounts to 5% as of the beginning of the third year. This adjustment will actually meet or exceed any external market sample submitted. By contrast the Union's final position would create a wage increase of some 8% which will outrank any comparison in the projected external market.

### Internal Equity

The Union contends, in relation to the internal equity consideration that its final position remains consistent with the City's pay equity compliance requirements. It also happens that the City remains in compliance with its statutory obligations for pay equity under its own proposal.

Aside from statutory considerations, the concept of equitable compensation packages within the same employing unit takes on great importance in establishing stable relationships among and between job families. The present arbitration prompts the conclusion that the internal equity stability considerations form a compelling reason to elevate internal over external wage factors in making the final determination.

The single most compelling factor favoring internal equity in the Champlin compensation program is that the City's proposal to the police officers matches the increase negotiated or otherwise voluntarily adjusted for all the other employee groups for the same three year contract cycle. By contrast, the final position submitted by the Union will not equate to increases granted to any other employee group in the City.

Obviously, the single most pertinent relationship between groups employed by the City are the police officers and the police sergeants. Of special significance to maintaining stable relationships and internal equity, it must be here noted that police sergeants are represented by a separate labor contract but by the same Law Enforcement Labor Services organization which has negotiated a three year agreement carrying exactly the same compensation package as represented by the City's last offer in these proceedings.

The sergeant's group certainly represents the unit of City employment closest in workplace culture, conditions of employment, and designation as essential employees. These and other aspects make the sergeants the most relevant in comparison maintaining internal equity. This Award must provide that the existing compensation relationship between these two groups be preserved for at least two reasons:

- It would be inimical to the health of collective bargaining if it happened that a closely linked group like the police officers can gain an economic advantage by choosing interest arbitration over its most comparable employee group who achieved settlement through negotiation. Such a result can only dampen efforts towards voluntary settlements by simultaneously encouraging interest arbitration.
- Disruption of the existing income relationship would compress differentials thereby hurting morale and possibly reducing the incentive to strive for promotion to the higher ranks.

Cost-of-living factor – naturally we have no COP data past 2010 as yet but the rate of change for recent months of 2010 show a continuing leveling off of the CPI increases; in fact, dipping for a time in 2000 to a negative rate of change. Given past history where the wages negotiated for Champlin police officers have consistently outpaced inflationary increases as measured by the CPI, it can be expected that both final positions would continue to improve the real dollar value of the group's compensation package, as illustrated below:

	<u>General Increase</u>	<u>CPI-U</u>
2009	3.5%	-0.4%
2008	3% + \$30/month	3.8%
2007	3.2% + \$25/month	2.8%
Total:	9.7% + \$55/month	6.2%

#### Award on Issues 2,3,4 Wages for 2010, 2011, and 2012

For any and all of the foregoing reasons, the City's position on Issues 2, 3, and 4 is hereby awarded. Therefore, the following wage schedules will be effected for the indicated three year contract cycle.

	<u>Salary Schedule</u>		
	2010	2011	2012
Start	\$39,511.73	\$39,906.84	\$41,503.12
Twelve Months	\$44,878.55	\$45,327.34	\$47,140.43
Twenty-Four Months	\$50,245.36	\$50,747.81	\$52,777.72
Thirty-Six Months	\$55,611.57	\$56,167.69	\$58,414.39
Forty-Eight Months	\$60,979.60	\$61,588.79	\$64,052.34

## Issue 6 – Insurance

### Insurance – Insurance 2012 – Article 22

The Union proposes the following:

The Union proposes the Employer's contribution to health insurance increase \$25 for 2012 for both family and single coverage. The Employer shall contribute the single deductible amount towards the HAS deductible for both single and family coverage.

The existing language provides no deductible contribution from the Employer for 2012.

The City proposes no contribution to the deductible.

Analysis and Findings: Perhaps there is no other item upon which a high degree of consensus can be found among interest arbitrators than on the common practice of relying on internal comparisons in awarding fringe benefit items. This is particularly true of insurance. One compelling reason for favoring internal equity arises from the routine practice of public employers, as well as private employers to pool all insurance of a given type with a single carrier for a single rate for the entire population served. The reason for this includes the convenience and economy of such a strategy.

Insurance carriers can, of course, carve out groups within the large population of employees served – but the matter of providing a different health insurance package to one group as an exception to others in the employee community cannot avoid resentment followed by heavy pressure to make the exception the rule.

In the instant cases the commonality of the premium payments, with all of its positive aspects, would be undercut by the Union's proposal in violation of basic concepts of fair and equal treatment to all groups and classes in City employment. The Union's proposal for its insurance payment package would provide an exceptional benefit not enjoyed by any other employee on the City's payroll. No sufficient justification can be found for awarding the Union's proposal in light of these stark facts.

### Award on Issue No. 6 – Insurance

For all the foregoing reasons, the City's position in Item 6 – Insurance is hereby granted.

## Issue No. 7 – Sick Leave

The Union proposed no change to the current contract language, which states:

Sick leave shall apply only to permanent, full-time employees. Employees shall earn sick leave at the rate of eight (8) hours per month for each month of service. Sick leave shall accumulate to a maximum of nine hundred sixty (960) hours. After the maximum

amount of nine hundred sixty (960) is reached, employees shall earn sick leave at the rate of four (4) hours per month of banked time. Such banked time shall not be used until all other accumulated sick leave has been exhausted.

An employee who has been absent due to illness of more than twenty-four (24) hours may be required by the Employer to furnish proof of illness such as a doctor's report.

Employees may donate up to twenty (20) hours of accrued sick leave (or a combination of vacation and sick leave up to a maximum of 20 hours) for the benefit of a fellow Employee. The number of hours donated must be credited to the sick leave amount of the receiving Employee. The Employee must notify the Employer in writing of the amount of time he/she wishes to donate and the name of the receiving Employee. This donation is subject to the City Ordinance and administrative policy rules currently in place.

The City proposes the following new language:

Sick leave shall be used for absence from duty because of personal illness, legal quarantine, or because of illness in the immediate family. Immediate family shall mean parents, spouse, children, and step-children. Other family members may be considered by the Police Chief and City Administrator. Employees shall be further covered by the provisions of the Family and Medical Leave Act.

An employee who has been absent due to illness of more than two duty shifts ~~twenty-four (24) hours~~ in a pay period, or if there is an identified pattern of absences, may be required by the Employer to furnish proof of illness such as a doctor's report.

Analysis and Findings: Interest arbitrators generally avoid adding new terms to a collective bargaining agreement, as the Union notes in its objection to the City's proposed changes to the sick leave provisions of Article 18. It is true that arbitrators are loathe to plow new grounds where the parties have not previously set some patterns or guideposts. This is essentially a data driven process which seeks to position the parties relative to comparable bargaining entities.

In regard to the changes in the Sick Leave article, however, the internal equity factor applies with firm weight. The record shows the sergeants' bargaining unit within the same police department have already negotiated those same changes into its agreement. The importance of this inclusion into the sergeants' labor contract lies not only within the equity of having common leave of absence terms in effect for all police personnel but also in the efficiencies of administration of sick leave within the same operating unit.

The content of the second change proposing ground rules for sick leave monitoring represents merely a specific contractual reference to an existing management right. Nothing in the collective bargaining agreement currently prohibits or limits the City's right, indeed responsibility, to ensure against abuse of sick leave or to look into sick leave use patterns which might suggest chemical dependency.



Award: Internal equity and efficiencies of sick leave administration within the police department firmly support the City's proposal which is, therefore, hereby awarded.

Issue No. 8 – Parenting Leave – Article 27.3

Again, the Union proposes no change to the current contract language, which is as follows:

Use of Sick Leave. An Officer may use all of his/her accumulated sick leave, vacation leave, or compensatory time while on leave. The use of these leaves shall not increase the original 90 day unpaid leave.

The City proposes the following:

Use of Sick Leave. An Officer may use all of his/her accumulated ~~sick leave~~, vacation leave, or compensatory time while on leave. The use of these leaves shall not increase the original 90 day unpaid leave.

Analysis. The basic purpose for the proposed change in Article 27.3 according to the City is to amend the existing parenting leave language to no longer permit sick leave to be used for leaves except when the police officer or immediate family member is ill.

The Union objects to the proposed change on the grounds that it forecloses any possibility of a traditional quid pro quo at the bargaining table. Further, the Union argues that the original version of this provision has been in the Agreement for almost twenty years and has caused no problems that the City has identified.

These are strong arguments but here they must fail in the face of the power of internal equity concerns as well as the intrinsic reasonableness of the City's position. The City points out that the current language of Article 27.3 provides conditions of sick leave use not available to any other employees. As an adjustment which brings police officers in line with almost all other employees across the board in use of sick leave restrictions, the City's position meets the test of reasonableness as well as equity.

Award

Based on the foregoing rationale, the City's position on amending Article 27.3 is, hereby, awarded.

## CLOSING COMMENTS

The foregoing Analysis and Award on the seven issues remaining at impasse favors the City on every item. While this result undoubtedly will prove disappointing to those police officers who may have expected interest arbitration to yield some kind of trade offs or compromise.

In plain truth, compromise occurs much more often at the bargaining table. While this Award hews to the fundamentals of interest arbitration, the major defect in the final product arises from the inability of this Arbitrator to fashion any quid pro quos on those issues where none had already been offered. By way of dicta, therefore I would suggest that the City seek ways to encourage greater reliance on negotiations by a greater commitment to compromise and tradeoffs in further bargaining cycles.

The City paid extensive attention to the ability to pay factor. There was no need, however, to respond to this part of its pleadings because the analyses of the parties' positions on each of the items at impasse did not turn on the ability to pay factor.

As pointedly noted, on each issue, the predisposing factor centered on the internal pattern established by negotiations with other unionized employee groups within the City. In every instance, the City's last offer to the police officers fell squarely within this negotiated pattern. This symmetrical fit signified that this Award which favored the City consistently, serves to reinforce future reliance on collective bargaining, rather than interest arbitration, as the preferred means of resolving conflicting positions over wages, benefits, and other terms and conditions of employment.

June 28, 2011  
Date

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John J. Flagler, Arbitrator